

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES L. JOHNSON, JR.,

Plaintiff,

v.

SOLANO COUNTY SHERIFF, *et al.*,

Defendants.

Case No. 2:22-cv-02220-KJM-JDP (PC)

FINDINGS AND RECOMMENDATIONS
THAT THIS ACTION BE DISMISSED AS
DUPLICATIVE

ECF No. 8

Plaintiff is a former state prisoner proceeding without counsel. Plaintiff filed a complaint in Solano County Superior Court alleging that defendant officers Cynthia Hill, Marc Avecilla, and Adrian Torres used excessive force against him at Solano County Jail. ECF No. 1. On December 14, 2022, defendants timely removed this action to federal court. *Id.* A day later, they filed a motion to dismiss. ECF No. 3. Plaintiff did not respond to defendants' motion to dismiss. Accordingly, on January 30, 2023, I ordered plaintiff to show cause for his failure to not timely file an opposition. ECF No. 7. Plaintiff did not respond, and so on March 7, 2023, I recommended that plaintiff's complaint be dismissed for failure to prosecute, failure to comply with court orders, and failure to comply with the court's local rules. ECF No. 8.

I recently became aware that plaintiff has filed a complaint in this district that is nearly identical to the complaint in this case. *See Johnson v. Solano County Sheriff*, 2:22-cv-2061-DAD-CKD (PS) (E.D. Cal.). Because the complaint in this action is duplicative of the complaint

1 in plaintiff's other action, I will recommend that this action be dismissed. *See Cato v. United*
2 *States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (holding that a complaint that "merely repeats
3 pending or previously litigated claims" may be dismissed as frivolous under the authority of 28
4 U.S.C. § 1915).

5 Accordingly, it is hereby ORDERED that the March 7, 2023 findings and
6 recommendations, ECF No. 8, are vacated.

7 Further, it is RECOMMENDED that this action be dismissed as duplicative.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
10 after being served with these findings and recommendations, any party may file written
11 objections with the court and serve a copy on all parties. Such a document should be captioned
12 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
13 objections shall be served and filed within fourteen days after service of the objections. The
14 parties are advised that failure to file objections within the specified time may waive the right to
15 appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
16 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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18 IT IS SO ORDERED.

19 Dated: March 17, 2023

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21 JEREMY D. PETERSON
22 UNITED STATES MAGISTRATE JUDGE
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